



DEPARTMENT OF JUSTICE

THE ANTITRUST DIVISION'S INTERNATIONAL ANTI-CARTEL ENFORCEMENT PROGRAM

By:

Joel I. Klein

Assistant Attorney General

Antitrust Division

U.S. Department of Justice

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C It is a pleasure to be here today. In a few minutes, you are going to witness what I believe is the single greatest antitrust compliance tool ever created -- undercover FBI tapes of the lysine cartel at work. This highlight tape, which is being made publicly available today, will give you and your clients a ringside seat at international cartel meetings where competitors fix prices and carve up the world's sales of the feed additive, lysine. Of course, what makes these tapes such an effective deterrent is not just the unnerving notion that the FBI might be watching but the fact that high-level executives went to jail and their companies paid heavy fines as result of their cartel activity.

C Antitrust Compliance Programs. We are making these materials available because the antitrust private bar has always played an important role in deterring antitrust offenses. For example, you are largely responsible for the current prevalence and success of corporate compliance programs. Even when compliance programs fail to prevent antitrust offenses from occurring, they have proven to be very effective in terms of identifying violations. In fact, many of the Division's recent Corporate Amnesty applications were initiated as a result of early detection by the firm's antitrust compliance programs. Which, in the final analysis, ended up saving these companies tens of millions of dollars and, quite possibly, kept their top executives out of jail.

C Misguided Observers. It is also important that your business clients see these tapes to dispel any notion that cartel activity is innocuous and that no one is really harmed by it. I say that because, remarkably, there are still those who continue to attempt to justify or excuse cartel behavior and to argue that it is of no real economic consequence. As recently as last month,

one columnist referred to price fixing as a “figmentary crime,” which should be treated as an “information exchange between [consenting] adults.” In essence, the columnist’s view was that the Division should not bother prosecuting criminal antitrust violations because no one is harmed.

C The reality is that price fixing, like bid-rigging and market allocation schemes, are anything but victimless crimes. The perpetrators of these conspiracies are, quite literally, stealing money out of the pockets of American businesses and consumers. Let me give you just a few examples from our recent cases.

C Graphite. We can start with the graphite electrodes conspiracy where the producers agreed to fix prices and allocate markets around the world. I can guarantee you that steelmakers in the United States and abroad did not consider that conspiracy to be a victimless crime. Before the cartel was cracked by the Division, it affected nearly \$2 billion dollars in U.S. commerce alone. As a result of the conspiracy, cartel members eliminated competition and were able to force prices up by *over 60 percent* during the existence of the conspiracy. Now, were these the acts of “consenting adults?” You bet. In this conspiracy the value of the stocks and options held by individual conspirators soared with the passing of each agreed-upon price increase, so that some of the conspirators personally pocketed millions of dollars as a direct result of their criminal activity.

C Vitamins. Or, consider the vitamin cartel, dubbed “Vitamins, Inc.” by one of the cartel members. It lasted for nearly a decade before it was cracked by the Division. During that time, the cartel members reached agreements on everything from how much product each

company would produce to how much they would charge to which customers they would sell.

The victims who purchased directly from the cartel members included companies with household names such as General Mills, Kellogg, Coca-Cola, Purina Mills, and Proctor and Gamble. However, these companies were just the first to feel the impact of this conspiracy. In the end, every American consumer took a hit so that these conspirators could reap hundreds of millions of dollars in illicit revenues.

C Lysine. And, lastly, you might ask American farmers if they think the lysine conspiracy caused any harm. Prices for lysine, which is used as a feed additive for livestock, were falling before Archer Daniels Midland and its European and Asian competitors got together and agreed to carve up the market. Then, in the first six months of the conspiracy, prices went up *70 percent* and actually doubled over the entire course of the conspiracy.

C Cartels Are Not Short-Lived. Another great myth, perpetrated by some of the theoretical thinkers is that cartels, where they exist, are unstable and short-lived. Our experience proves otherwise. The Division has uncovered a number of conspiracies that operated for a decade or more, and the majority of the international cartels that we have prosecuted or that are currently under investigation are believed to have already existed continuously for 5-10 years or longer. In each of the cases that I just mentioned, you can bet that the cartels would still exist today if they had not been detected and prosecuted by the Division.

C Financial Incentives. The members of these cartels, of course, commit these crimes because of the financial rewards associated with anticompetitive schemes. It is simply not serious for

anyone to argue that conspirators, such as the Vitamins conspirators, which are large, sophisticated firms, would spend millions to implement and hide their cartel, would risk paying many hundreds of millions in fines to the U.S. and Canada, would risk seeing their executives go to jail, and would be exposed to the serious prospect of paying very large additional sums in civil damages to the customers they have cheated, for activities that had no real economic consequences, for activities that reaped no financial rewards for them.

C A Fraud On Consumers. When you see these tapes you will be left with the unshakeable conclusion that you are witnessing a serious crime. Price fixing is a flat out fraud on consumers and businesses -- it is nothing more than theft by well-dressed thieves and should be met with unequivocal public condemnation. We should not view any individual, company or industry as above the law merely because the theft involved is accomplished via business meetings among high-level executives. Nor should price fixing be excused when companies fall on difficult economic times any more than bank robbery should be viewed as a legitimate answer to unemployment.

C Global Movement. I'm pleased to report that this strong enforcement message is beginning to take hold globally. It used to be that the United States stood almost alone in the world in our commitment to antitrust enforcement. Until the 1990's, a not infrequent reaction of foreign governments to news that the Antitrust Division was investigating the activities of international cartels that had extracted money from U.S. consumers' and businesses' pockets was to leap to the defense of "their" firms, accuse the U.S. of "extraterritorial" tendencies in defending our consumers, threaten to invoke blocking statutes, and express astonishment that any country

should even want to have pro-competitive laws, much less enforce them. Happily, the global environment in which we work today is radically different. In the past decade, a strong interest in having free markets defended by sound antitrust laws and sound antitrust enforcement has spread throughout the world. Over 80 countries now have antitrust laws -- most of them enacted during the past decade -- and another 25 countries are in the process of drafting such laws. There are many differences in the purposes and details of these laws, some of them quite significant. But one thing on which just about everyone agrees is that “hard core” cartels are pernicious and should be uncovered and stopped.

C International Anti-Cartel Efforts. We have been working with our counterparts abroad to assist them in strengthening their anti-cartel enforcement efforts. For example, last fall an unprecedented gathering of over 80 anti-cartel enforcers from nearly 30 countries on six continents met in Washington for the first International Anti-Cartel Enforcement Workshop to share information about the nuts and bolts of cartel enforcement and to foster the development of cooperation on cartel issues among antitrust authorities around the world. In addition, we have made presentations to antitrust enforcers abroad using the materials that you will see today to educate them on the common characteristics of international cartels and how they can be detected.

C No Safe Harbors. Finally, there is a growing appreciation among international business persons who engage in cartel activity that governments are stepping up their efforts to combat cartel activity and that safe harbors for international cartel activity are rapidly shrinking. This last point was dramatically made again today with the announcement that four more foreign nationals have

agreed to plead guilty and serve time in a U.S. prison for their participation in the vitamin conspiracy. Together with the two Swiss Hoffmann-La Roche executives who went to jail last year, the cases announced today represent a clean sweep for the Division in this investigation -- with all of the high-level Hoffmann La-Roche and BASF business executives responsible for the conspiracy pleading guilty and facing jail sentences. What is particularly remarkable about these cases is that all of these defendants agreed to travel here, submit to U.S. jurisdiction, and go to prison even though they resided outside of the United States. A few years ago these results would have been unimaginable. However, these defendants came to realize that the world is changing and that the risks associated with living their lives as international fugitives in a world growing increasingly intolerant of price fixers was too great.

C Conclusion. Let me conclude by saying that I think the working relationship between the Antitrust Division and the private bar has always been very productive. In making these materials available, we hope to work with you in strengthening and continuing the success of antitrust compliance programs to assist you and your clients in deterring and detecting antitrust violations. This common objective is not only in both of our interests, it is in the best interests of American businesses and consumers as well.